Petition

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No.

In The

Supreme Court of the United States

TERM, 1981

In re

GEORGE D. GLIDDEN,
Debtor

STATE OF CONNECTICUT,
Petitioner,

V.

GEORGE D. GLIDDEN,
Respondent,

UNITED STATES OF AMERICA,
Intervenor.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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QUESTIONS PRESENTED

1. Whether the federal government is barred by the Tenth Amendment of the United States Constitution from enacting laws under the authority of Article I, Section 8 of the United States Constitution which discharge obligations owed to the State of Connecticut in performing its public welfare functions.

2. Whether the defendant's debt created by a Connecticut court's order of support in a divorce proceeding and assigned to the state by the defendant's ex-wife as a condition of eligibility for public assistance is barred from discharge in bankruptcy as being in violation of the Eleventh Amendment.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The State of Connecticut respectfully prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered in this case on June 25, 1981.

OPINIONS BELOW

The opinion of the Court of Appeals has not yet been reported. A copy of the slip opinion appears in the Appendix hereto. The opinion of the United States Bankruptcy Court, District of Connecticut appears in the Appendix hereto.

JURISDICTION

The judgment of the Court of Appeals was entered on June 25, 1981. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

42 U.S.C. §602(a)(26)(A): A State plan for aid and services to needy families with children must provide that, as a condition of eligibility for aid, each applicant or recipient will be required to assign the State any rights to support from any other person such applicant may have.

11 U.S.C. §523(a)(5)(A): A discharge (in bankruptcy) does not discharge an individual debtor from any debt to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child...but not to the extent that such debt is assigned to another entity, involuntarily, by operation of law, or otherwise.

11 U.S.C. §101(14) defines "entity" as including a "governmental unit" which in turn encompasses "State," 11 U.S.C. §101(21).

STATEMENT OF THE CASE

This is a proceeding whereby the respondent-bankrupt, on October 26, 1979, filed with the United States Bankruptcy Court a Petition in Bankruptcy in which he sought to discharge, among other debts, the sum of $2,890.06 owed the State of Connecticut.

Said debt accrued under an order for child support payments, in the amount of $15.00 per week per child, entered in connection with a divorce decree on October 3, 1973. At the time of said divorce, the respondent's wife and two children were recipients of public assistance. As a condition of eligibility for said public assistance, the respondent's ex-wife assigned the rights of support, to which she was entitled against the respondent for herself and her minor children, to the State of Connecticut pursuant to Section 17-82(b) of the Connecticut General Statutes and 42 U.S.C. §602(a)(26)(A) of the Social Security Act.

The State of Connecticut objected to the discharge of respondent's debt on the grounds that the bankruptcy statute, 11 U.S.C. §523(a)(5)(A), which permitted the discharge of child support obligations assigned to the state, violated the Tenth and Eleventh Amendments of the United States Constitution.

In a decision dated January 5, 1981, the United States Bankruptcy Court for the District of Connecticut permitted the discharge of the respondent's debt. From that judgment the State appealed directly to the United States Court of Appeals for the Second Circuit pursuant to 28 U.S.C. §1293(b). The Court of Appeals, on June 25, 1981, affirmed the decision of the U.S. Bankruptcy Court.

REASONS FOR GRANTING THE WRIT

1. THIS CASE PRESENTS QUESTIONS OF GREAT PUBLIC IMPORTANCE

(a) This case involves federal regulation of sovereign activities of the State of Connecticut in violation of the Tenth Amendment.

In its argument that the federal bankruptcy statute was constitutionally impermissible under the Tenth and Eleventh Amendments, the State relied principally on two decisions of this Court, *Ashton* v. *Cameron Dounty Dist.*, 298 U.S. 513 (1936), and *National League of Cities* v. *Usery*, 426 U.S. 833 (1976).

In *Ashton*, the Supreme Court held that the power of Congress to pass uniform laws on the subject of bankruptcies does not permit Congress to pass legislation which "might materially restrict (the state's) control over its fiscal affairs," 298 U.S. at 530. The court analogized the bankruptcy power to the taxing power and concluded that the principles of state sovereignty which limit the latter require like limitation on the power which springs from the bankruptcy clause, 298 U.S. at 523.[1]

In *National League of Cities*, the Court held that, consistent with the Tenth Amendment, Congress may not exercise its power to regulate commerce where those regulations "impermissibly interfere" with "traditional (state) governmental functions," 426 U.S. at 851, 852. (Mr. Justice Blackmun, in his concurring opinion, read the majority as adopting a "balancing

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[1]Both the U.S. Bankruptcy Court and the Court of Appeals expressed doubt as to whether *Ashton* remains good law after *United States* v. *Bekins*, 304 U.S. 27. A careful reading of *Bekins*, however, shows a Court almost going out of its way to distinguish, not overrule *Ashton*. *Ashton*, it is submitted, remains good case law for the proposition that bankruptcy legislation is not immune from Tenth Amendment scrutiny.

approach" that would allow, under some circumstances, federal intrusion into areas of traditional state activity; specifically, in those instances where the federal interest is "demonstrably" greater and state compliance is "essential," 426 U.S. at 856.) The Court drew a fundamental distinction between the federal regulation of private and state activities. As in *Ashton,* the Tenth Amendment limitations on Congress' power to regulate commerce were compared to those same limitations on Congress' power to tax, 426 U.S. 842, 843 and n.14.

Guided by the holdings in both *Ashton* and *National League of Cities,* the State argued that the collection and enforcement of child support obligations is, by any definition, a "traditional state governmental function" in Connecticut; that 11 U.S.C. §523(a)(5)(A) will "impermissibly interfere" with Connecticut's ability to collect and enforce child support payments; and that the federal interest in promulgating Section 523(a)(5)(A) is not "demonstrably greater" than that of the State in opposing it.

In *National League of Cities* the issue was whether the federal government could treat the states as ordinary employers. In this case the issue is whether the federal government can treat the states as ordinary creditors.

In both cases the Court's resolution of these issues has broad ramifications for the nature of the constitutional relationship between the states and federal government within the federal system.

The circumstances of this case clearly show why a sovereign must not be treated as just another creditor. Here the State is an involuntary creditor — unlike private sector creditors it cannot pick and choose its assignors and debtors nor can it write off discharged debts for tax purposes.

In *National League of Cities* the states conceded that the establishment of wage and hour regulations was within the authority granted to Congress under the Commerce Clause. Similarly, in this case the question is not whether the enactment

of the federal legislation is outside the scope of Congress' bankruptcy power. Rather, the issue is whether the exercise of that power by Congress is limited by state sovereignty. If a state must submit to federal regulation of one of the most basic activities it exists to perform, namely the securing of support on behalf of all minor children within its borders, including those children who are recipients of public assistance, and if the Bankruptcy Clause is all-embracing then the states must remain sovereign only at the pleasure of the federal government. It is respectfully submitted that "sovereignty" on these terms is a myth.

(b) The federal bankruptcy statute will have a devastating impact on Connecticut.

At the present time, Connecticut collects over $11 million dollars per year in child support payments where the children are recipients of public assistance (i.e., under its "IV-D program"). The amount collected has increased dramatically in recent years. In fiscal year 1978-79, over $1.25 million dollars was collected on outstanding arrearages; $9.79 million dollars was collected on current support charges. In spite of being one of the most vigorous states in the nation in this area, Connecticut is faced with the fact that not every absent parent complies with his support order. In fact, payments from absent parents average between 51% and 76% of the amount ordered on their current support and between 19% and 42% of the payments ordered on existing arrearages. As a result, nearly seven million dollars in current charges were unpaid in fiscal year 1978-79, bringing to $47.1 million dollars the total of child support monies owed the State of Connecticut.[2]

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[2]All figures were stipulated to by the parties. Further, in the U.S. Bankruptcy Court in Hartford alone (there is a second court in Bridgeport) some 54 petitions were filed between 10-1-79 (the date of the Bankruptcy Reform Act) and 12-31-80 seeking to discharge over $208,000.00 in support arrearages owed the state.

Section 523(a)(5)(A) of the Bankruptcy Code, if allowed to stand, will clearly have a serious economic impact on Connecticut. Not just on the potential loss of $1.25 million dollars annually in arrearage payments; not just in the possible discharge of over $47.1 million dollars owed the state. But, perhaps more importantly, such legislation will interfere with the state's ability to enforce its current support charges. While no figures are presently available, logic dictates that knowledge by an absent parent that unpaid child support may later be discharged can only discourage, not encourage, continuing payment of those support payments. "Where a third party is suing on an obligation involuntarily imposed, excepting the debt from discharge deters the husband from withholding aid." 53 Col. L.R. 570, 571. Conversely, allowing the discharge of child support arrearages owed to states would "give tacit encouragement to parents who seek to avoid their duty to support their children." *Williams* v. *Dept. of Social and Health Services,* 529 F2d 1264, 1271.

The present bankruptcy statute is a green light to parents to avoid their duty to support their children. A state investigator may locate an absent parent; a state attorney may prepare the case; a state judge may establish an order of support; a state family relations officer may at some later point issue a contempt citation for non-payment; a state deputy sheriff may bring him back before the court; the parent may then be ordered to make payments on his arrearage. But, in Hartford at least, that parent can then literally walk down the street to the United States Bankruptcy Court and discharge whatever arrearage is owed.

Furthermore, an additional effect of Section 523(a)(5)(A) must be the "forced relinquishment of important governmental activities," *National League of Cities, supra,* at 847.

> "in view of the severe shortage of public assistance funds and the ever mounting demands on them, there is certainly a bonafide governmental interest in recouping such funds...."

Thibeault v. *White,* 168 Conn. 112, 118. See, also, *Williams, supra,* at 1271; *N.Y. State Dept. of Social Services, et al* v. *Dublino,* 413 U.S. 405 (1973); *Snell* v. *Wyman,* 281 F. Supp. 853, affirmed 393 U.S. 323; and *Charleston* v. *Wohlegemuth,* 332 F. Supp. 1175, affirmed 405 U.S. 970. In short, there is only so much money to go around. Federal legislation which interferes with the state's ability to recover AFDC funds must adversely affect the state's ability to finance new or existing social welfare programs.

(c) This case will resolve questions not fully answered in *National League of Cities* v. *Usery.*

This case presents the Supreme Court with an opportunity to clarify at least one question not fully addressed by *National League of Cities:* is legislation promulgated under the Bankruptcy Clause subject to Tenth Amendment analysis? Both the Bankruptcy Court and Court of Appeals expressed reservations on this question.

National League of Cities, of course, dealt with legislation promulgated under the Commerce Clause which, like the Bankruptcy Clause, is one of Congress' enumerated powers under Article 1, Section 8 of the United States Constitution. The Court in *National League of Cities* described the Congressional grant under the Commerce Clause as "plenary," 426 U.S. at 840. There is nothing in the opinion to suggest that only federal legislation promulgated under the Commerce Clause is constrained by principles of federalism. In fact, just the opposite: the Supreme Court specifically noted that no less a power than that of the federal government to tax was likewise subject to Tenth Amendment constraints, 426 U.S. 842, 843 and n.14. The Court did suggest that principles of federalism may have to give way when federal legislation is promulgated under its war powers, spending power or Section 5 of the Fourteenth Amendment, 426 U.S. at n.17 and 18. However, the Court nowhere suggested that the bankruptcy power may likewise be immune to Tenth Amendment scrutiny or that the bankruptcy power is

any more "plenary" than the commerce power or the power to tax.

(d) In addition to its importance in the area of Tenth Amendment analysis, this case affords an opportunity to answer Eleventh Amendment questions not fully addressed in *Edelman* v. *Jordan*.

Throughout this case the state has consistently argued that the discharge of respondent-bankrupt's child support debt is violative of the Eleventh Amendment.

Edelman v. *Jordan*, 415 U.S. 651 (1974), held that the Eleventh Amendment prohibits a federal court from ordering retroactive monetary relief out of a state treasury absent express consent by the state. Clearly there is no provision for state consent in 11 U.S.C. §523(a)(5)(A). And just as clearly, the discharge in bankruptcy of child support monies owed the state represents a monetary loss to the state. While the discharge "does not deplete Connecticut's coffers by a penny"[3] in the very narrow sense that the state has not been ordered to pay Mr. Glidden money, nevertheless it is obvious that discharge of the defendant's accrued debt will have to be made up out of the state treasury. This is not, after all, simply a case of a state having to find more money in order to implement prospectively a federal court decision. Rather, it is cancellation of an account receivable that Connecticut depends upon as a source of revenue[4] and which, it is submitted, this State has every right to collect in full.

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[3] *In re Crisp*, 521 F2d 172 (2d Cir., 1978). Cited favorably by both the Bankruptcy Court and Court of Appeals.

[4] Connecticut collects over $1.25 million dollars annually in arrearage payments alone. See *supra*.

2. THE DECISIONS OF THE U.S. BANKRUPTCY COURT AND THE COURT OF APPEALS IN THIS CASE ARE NOT ONLY ERRONEOUS BUT REST ON DISSIMILAR HOLDINGS

In its decision the U.S. Bankruptcy Court stated that "the Supreme Court case most directly in point, and the one which this court feels is controlling, is *Perez* v. *Campbell,* 402 U.S. 637."[5]

In contrast to the Bankruptcy Court, the Court of Appeals made no reference to the Supremacy Clause or *Perez* v. *Campbell.* Instead the court distinguished the instant case from *National League of Cities* essentially by finding that the collection and enforcement of child support is not a traditional or integral state governmental function. (The court therefore found it unnecessary to apply the "balancing test" suggested by Mr. Justice Blackmun's concurring opinion in *National League of Cities.*) However, such a finding ignores a number of unchallenged facts: with respect to collecting support in welfare cases, there are statutes in Connecticut dating back at least to 1917; in non-welfare cases, Connecticut statutes can be traced as far back as 1699; orders of child support are invariably established in state courts, using state statutory and case law;[6] enforcement

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[5]In response the state argued that to claim that *Perez* v. *Campbell* decides this case in favor of the respondent-bankrupt presumes the very issue that is being litigated, namely whether the federal legislation is in fact constitutional. After the constitutionality of the federal legislation is determined then *Perez* v. *Campbell* becomes relevant, not before. To decide otherwise would be to hold that unconstitutional federal legislation must control where it conflicts with state law which, of course, is incorrect. If federal legislation is invalid, the Supremacy Clause cannot save it.

[6]"The whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the states and not to the laws of the United States." *In re Burrus,* 136 U.S. 586, 593; *Ohio ex rel. Popovici* v. *Agler,* 280 U.S. 379, 383.

of those orders is left to state investigators, state family relations officers, state deputy sheriffs and state lawyers. While, as the Court of Appeals pointed out, "the AFDC system as a whole has long been recognized as being based on a scheme of cooperative federalism" (citing *King* v. *Smith,* 395 U.S. 309), the actual collection and enforcement of support has always been left to the states.

In sum, Connecticut's function in this important area is, by any definition, "traditional."[7]

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[7]"It would not seem open to serious question that every state has an interest in securing the maintenance support of minor children residing within its own territory so complete and so vital to the performance of its function as a government, that no other state could set limits upon it." *Yarborough* v. *Yarborough,* 290 U.S. 202, 205 (Stone, J., dissenting).

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals for the Second Circuit.

Respectfully submitted,

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APPENDIX

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

In The Matter Of:

GEORGE D. GLIDDEN,		In Bankruptcy
	Debtor	No. 2-79-00842
STATE OF CONNECTICUT,		
	Plaintiff	
V.		
GEORGE D. GLIDDEN, DEBTOR,		Adversary Proceeding
	Defendant	No. 2-80-0003

APPEARANCES:

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MEMORANDUM AND ORDER

KRECHEVSKY, Bankruptcy Judge

BACKGROUND

In this adversary proceeding commenced by the State of Connecticut the sole issue is the constitutionality of 11 U.S.C.

§523(a)(5)(A) which provides that a discharge will not discharge an individual debtor from any debt to a spouse or a child of the debtor for any alimony, maintenance, or support unless "(A) such debt is assigned to another entity, voluntarily, by operation of law, or otherwise." 11 U.S.C. §101(14) defines "entity" as including a "governmental unit," and §101(21) defines "governmental unit" to mean, *inter alia,* a "State." The principal contention of Connecticut is that §523(a)(5)(A), in discharging child support obligations assigned to the state, impermissibly interferes with Connecticut's traditional state government function of collecting such obligations, thereby violating the Tenth Amendment to the United States Constitution.[1]

A joint stipulation has been filed setting forth the following facts. George D. Glidden (debtor), who filed a Chapter 7 petition on October 26, 1979, is indebted to Connecticut in the amount of $2,890.06. This debt accrued under an order for child support payments in the amount of $15.00 per week per child entered in connection with a divorce decree on October 3, 1973. On that date, the debtor's former spouse and two children were recipients of public assistance. As a condition of continued eligibility for such public assistance, the debtor's former spouse assigned the rights of support to Connecticut pursuant to Conn. Gen. Stat. 17-82(b) and the Social Security Act. Conn. Gen. Stat. 17-82(b), which requires such assignment of support rights, was enacted in response to Title IV-A of the Social Security Act, 42 U.S.C. §602, in order to qualify Connecticut for federal funds for its Aid to Families With Dependent Children Program (AFDC). The debtor's obligation to Connecticut represents the net accumulated arrearage of the amount ordered by the state court divorce decree, but not the actual AFDC benefits to the debtor's dependents, which benefits exceed the obligation to Connecticut. In fiscal year 1979, Connecticut disbursed through AFDC over 170 million dollars, of which the

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[1]Amendment X — The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

United States contributed one-half. In the same year, Connecticut collected support accruals of 11 million dollars, of which 65% is retained by Connecticut, and 35% is credited to the United States as a reduction in the federal allocation to Connecticut for AFDC payments. At the end of 1979, the balance of unpaid support payments due Connecticut was $47,158,000.00.

While Connecticut's principal constitutional attack is based upon the Tenth Amendment, it asserts that §523(a)(5)(A) is violative of the Eleventh Amendment as well.[2] The debtor claims that the legislative enactment rendering his debt dischargeable is constitutional and relies upon the bankruptcy clause of the federal constitution.[3] In addition, the debtor alludes to the supremacy clause of the constitution,[4] as invoked in *M'Culloch* v. *Maryland,* 4 Wheat.316 (1819). The debtor says that Connecticut's claim to the protection of the Eleventh Amendment was rejected in *Matter of Crisp,* 521 F2d 172 (2nd Cir. 1975).

DISCUSSION

Connecticut's Tenth Amendment attack upon §523(a)(5(A) rests solely upon the decision of the United States Supreme Court in *National League of Cities* v. *Usery,* 426 U.S. 833 (1976). In that case, the Court held that a 1974 congressional

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[2]Amendment XI — The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State....

[3]Article I, §8, cl 4 provides that Congress shall have the power "To establish...uniform laws on the subject of Bankruptcies throughout the United States."

[4]Article VI, cl 2. This Constitution, and the Laws of the United States which shall be made in pursuance thereof;...shall be the supreme law of the Land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the Contrary notwithstanding.

amendment to the Fair Labor Standards Act which had the effect of extending the minimum wage and maximum hour provisions of the Act to employees of states and their political subdivisions was not a valid exercise of the authority granted to Congress under the commerce clause, Art. I, §8, cl 3, inasmuch as the 1974 amendment, by requiring disbursement of state funds, had the effect of displacing "state policies regarding the manner in which [the states] will structure delivery of those governmental services which their citizens require." *Id.* at 847. *Usery* determined that such an act of Congress so interfered with "the States' freedom to structure integral operations in areas of traditional governmental functions" as to be beyond the power delegated to Congress in the commerce clause, *Id.* at 852, and thus violated the Tenth Amendment reservation of powers to the states. Connecticut argues that enforcement of child-support obligations is a traditional governmental function in Connecticut, rooted in policy considerations dating in one form or another to colonial days. It claims that the bankruptcy clause, like the commerce clause, is subject to Tenth Amendment scrutiny,[5] that §523(a)(5)(A), by rendering child-support obligations assigned to the state dischargeable, impermissibly interferes with the state's ability to collect and enforce such obligations, and that federal interest in promulgating §523 (a)(5)(A) is not demonstrably greater than the contrary interest of the state when a balance of interest test is applied.

I do not believe that the constitutional analysis of *Usery* resolves the instant dischargeability issue. I conclude that the case at bar is clearly distinguishable from *Usery,* and that Congress was acting within its constitutionally delegated powers when it promulgated §523(a)(5)(A) of the Bankruptcy Reform Act.

Usery limits, by application of the Tenth Amendment, the power of Congress pursuant to the commerce clause to entrench

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[5]Citing *Ashton* v. *Cameron County Dist.,* 298 U.S. 513 (1936) and *United States* v. *Bekins,* 304 U.S. 27 (1938).

upon the right of the State to determine its own budgetary disbursements. Inarguably, the commerce power is a general one which has been employed to serve the most far-reaching ends. By contrast, the bankruptcy power is a specific one, focused upon a restricted and identifiable area of societal concern. The invalid statute in *Usery* called for states to disburse funds. The Court recognized that in so doing Congress had exercised power "in a fashion that impairs the States' integrity or their ability to function effectively in a federal system." *Id.* at 843. No such conclusion is justified with respect to the instant contested statute. Discharge provisions promulgated by Congress under the bankruptcy power make no demand upon the states to spend money, and it can scarcely be said that the joint stipulation of the parties demonstrates that Connecticut's integrity or its ability to function effectively has been or will be impaired by the discharge of support obligations assigned to it.

Connecticut argues that *Usery* is a reaffirmation of *Ashton* v. *Cameron County Dist., supra.* In *Ashton,* the Supreme Court held that the bankruptcy clause did not confer power on the federal government to limit the states in the control of their fiscal affairs, and the Court struck down an amendment to the Bankruptcy Act which allowed municipal corporations to resort to federal courts of bankruptcy to effect readjustment of obligations. *Ashton* has been referred to as a case which no longer represents authoritative law. "*Ashton* v. *Cameron County District*...in effect...[has] been overruled by *United States* v. *Bekins*"; *Prudential Insurance Co.* v. *Benjamin,* 328 U.S. 408, 433, at n. 4 (1945). The other Supreme Court holding referred to by Connecticut, *United States* v. *Bekins, supra,* is the very case cited by the Court in *Prudential Insurance Co., supra* as having overruled *Ashton.* In *Bekins,* the then newly-enacted Chapter X of the Bankruptcy Act was held to be within the scope of the bankruptcy powers of Congress and not an infringement on the sovereignty of any state. *Id.* at 51. Chapter X authorized voluntary petitions by municipal corporations in the bankruptcy court to affect a composition of their debts. *Usery* cites neither *Ashton* nor *Bekins.* Neither case addresses

any issue involving the discharge provisions of bankruptcy law as applied to individuals — the central issue of the case at bar.

Ever since *Hanover National Bank* v. *Moyses,* 186 U.S. 187 (1902), it has been settled law that while Congress cannot pass legislation which is "grossly unreasonable" as applied to its powers under the bankruptcy clause, otherwise "Congress may prescribe any regulations concerning discharge in bankruptcy." *Id.* at 192, *Cf. Kalb* v. *Fuerstein,* 308 U.S. 433 (1940). The Supreme Court case most directly in point, and one which this court feels is controlling, is *Perez* v. *Campbell,* 402 U.S. 637 (1971). In *Perez,* the plaintiffs owed debts on a judgment for personal injury and property damage arising out of an automobile accident. At the time, a statute of the State of Arizona required that car owners involved in accidents prove their ability to pay any judgment or suffer suspension of their driver's licenses. Licenses suspended under the statute were not to be reinstated until any outstanding judgment was paid. The statute specifically provided that discharge in bankruptcy did not relieve debtors from paying such a judgment. The plaintiffs, having filed petitions and received discharges in bankruptcy, sought declaratory and injunctive relief to have their licenses reinstated, claiming that the Arizona statute was in direct conflict with the Bankruptcy Act and thus violative of the supremacy clause. The Supreme Court held that despite an acknowledged purpose of the Arizona statute to protect "the public using the highways from financial hardship which may result from the use of automobiles by financially irresponsible persons" (*Id.* at 644), the purpose of Congress in establishing the discharge provisions of the Bankruptcy Act was such that a conflict existed between the two statutes, and that under the supremacy clause, the Arizona statute had to give way. The position of Connecticut in the instant proceeding is analogous to that of Arizona in *Perez* to the extent that Connecticut asserts that federal dischargeability provisions must give way to its right to require payments from discharged debtors. The logic of *Perez* upholds the supremacy of the federal discharge provisions over the claimed right of Connecticut to collect support obligations from discharged debtors. Assuming, *arguendo,* that

Connecticut has established that enforcing the payment of support obligations is a traditional state governmental function, the statistics submitted to the court by way of stipulation, to show how much Connecticut is owed in arrearages upon debts attributable to assignments of support obligations, do not demonstrate how much Connecticut will lose by reason of discharges in bankruptcy. Any conclusions drawn upon the basis of the stipulated figures would be unreasonably speculative. Thus, even if this court were to hold that the principles of *Usery* governed the disposition of this proceeding, no adequate information has been presented as to what impact discharge has upon the ability of Connecticut to structure integral operations in what it asserts is an area of traditional governmental functions.

Contrary to Connecticut's assertion that the federal government's interest in enacting §523(a)(5)(A) is not demonstrably greater than Connecticut's interest in enforcing payment of support obligations, it appears that discharge provisions have had an increasing role in the history of bankruptcy law. Our earliest laws maximized the equal distribution of assets among the creditors of insolvent businessmen and traders, and omitted provisions for the discharge of debtors. But as the law evolved in succeeding bankruptcy acts, a primary purpose came to be, in the words of the often-cited holding in *Local Loan Co.* v. *Hunt,* 292 U.S. 234, 244 (1934), to give "to the honest but unfortunate debtor...a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt." Congress acted with due consideration of this purpose when it enacted §523(a)(5)(A), and repealed §456(b) of the Social Security Act (42 U.S.C. §656(b)) which had formerly made support obligations assigned to a state nondischargeable.

Connecticut's attack upon the constitutionality of §523 (a)(5)(A) on Eleventh Amendment grounds has been fully answered in *Matter of Crisp, supra:*

> The Commissioner also argues that the eleventh amendment bars discharge of Crisp's debt without the

> consent of Connecticut. But the eleventh amendment does not apply here at all. It protects a state from federal court money judgments necessarily paid out of the state treasury. The action must be 'in essence one for the recovery of money from the state.' In this case, Crisp is not seeking any payment from the State treasury. A judgment of dischargeability in the bankruptcy proceeding does not now deplete Connecticut's coffers by a penny....
>
> Secondly, Article I, section 8, clause 4 of the Constitution specifically grants Congress the power to enact bankruptcy laws, which it has exercised in Title 11 of the United States Code. It is now established that Congress, by enacting the Bankruptcy Act of 1898 and by continuing in effect what is now section 17a(a), 11 U.S.C. 635(a)(1), intended to make debts owed to the state and federal governments dischargeable.... Any exception for a particular kind of state debt should come from Congress, not from us. *Id.* at 178 (citations omitted).

In the proceeding at bar, the debtor has brought no suit to collect money from the State of Connecticut. To the contrary, the state is the plaintiff herein, seeking to have a debt owed to it by the debtor declared nondischargeable.[6]

Finally, the court recognizes that even if the constitutional issues raised herein more heavily favored Connecticut than I find them to do,

> A trial court should be slow to deny constitutionality to an Act of Congress unless its conflict with the con-

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[6]See also 11 U.S.C. §106(c) which provides that "notwithstanding any assertion of sovereign immunity (1) a provision of this title that contains...'entity'...applies to governmental units; and (2) a determination by the court of an issue arising under such provision binds governmental units."

stitutional provision is clear. Such duty belongs peculiarly to the appellate courts. *Thompson* v. *United States,* 148 F. Supp. 910, 914 (ED Pa. 1957).

For all of the foregoing reasons, the court holds that §523(a)(5)(A) of the Bankruptcy Code of 1978 was enacted pursuant to the power delegated to Congress under Art. I, §8, cl 4 of the United States Constitution, and enactment of said section was not barred by either the Tenth or the Eleventh Amendments. This being so, the claim of the State of Connecticut for judgment of nondischargeability of the debtor's debt owed on account of assignment of his support obligations is denied, and said debt is discharged, and it is

SO ORDERED.

Dated at Hartford, Connecticut, this 5th day of January, 1981.

/s/Robert L. Krechevsky
ROBERT L. KRECHEVSKY
UNITED STATES BANKRUPTCY JUDGE

In The

United States Court of Appeals

FOR THE SECOND CIRCUIT

NO. 1336 — SEPTEMBER TERM, 1980
(ARGUED MAY 29, 1981 DECIDED JUNE 25, 1981)

DOCKET NO. 81-5005

IN RE

GEORGE D. GLIDDEN,
Debtor.

STATE OF CONNECTICUT,
Plaintiff-Appellant,

v.

GEORGE D. GLIDDEN,
Defendant-Appellee,

UNITED STATES OF AMERICA,
Intervenor.

BEFORE:

FEINBERG, *Chief Judge,*
MANSFIELD AND KEARSE, *Circuit Judges.*

Appeal from judgment of the United States Bankruptcy Court, District of Connecticut, Robert L. Krechevsky, Bankruptcy Judge, upholding the constitutionality of 11 U.S.C. § 523(a)(5)(A), which permits the discharge of child support obligations that have been assigned to a State.

Judgment affirmed.

PAUL J. BAKULSKI, Hartford, CT, Assistant Attorney General for the State of Connecticut (Carl J. Ajello, Attorney General for the State of Connecticut, of Counsel), *for Plaintiff-Appellant.*

CHRISTOPHER C. NOBLE, Broadman & Noble, Hartford, CT, *for Defendant-Appellee.*

MICHAEL J. DENTON, Trial Attorney, Civil Division, Department of Justice, Washington, DC, *for intervenor.*

FEINBERG, *Chief Judge:*

In this proceeding, the State of Connecticut challenges the constitutionality of a provision of the Bankruptcy Reform Act of 1978 (the Act), 11 U.S.C. § 523(a)(5)(A), that permits the discharge of child support obligations that have been assigned to the State. The State argues that this provision impermissibly interferes with its exercise of a traditional state function — the collection and enforcement of child support obligations — and therefore exceeds the limits on congressional power imposed by the Tenth Amendment.[1] It also claims that the discharge provi-

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[1]The Tenth Amendment provides:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

sion violates the Eleventh Amendment[2] by permitting "indirect" suits against the states. We conclude that these arguments are without merit, and accordingly affirm the judgment of the bankruptcy court upholding the provision.

I.

The facts and procedural background may be summarized very briefly. The debtor, George D. Glidden, obtained a divorce decree in October 1973, in connection with which he was ordered to pay $15.00 per week in support of each of his two children. At the time of the divorce, Glidden's wife and children were receiving public assistance under Connecticut's program of Aid to Families with Dependent Children (AFDC). As a condition of their continued eligibility for such assistance, Glidden's wife assigned her rights to the support payments to the State. Glidden subsequently fell behind in these payments until, when he filed his petition in bankruptcy in October 1979, an arrearage of some $2,890 had arisen.

In December 1979, the State filed an objection to the discharge of this debt based on the Tenth and Eleventh Amendments to the Constitution. Acting on cross-motions for summary judgment, Bankruptcy Judge Robert L. Krechevsky of the United States Bankruptcy Court, District of Connecticut, rejected the State's arguments and granted the requested discharge in a careful and thorough opinion, dated January 5, 1981. By agreement with the debtor pursuant to section

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[2]The Eleventh Amendment provides:

> The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

405(c)(1)(B) of the Act,[3] the State has appealed directly to this Court. The United States, notified of the State's challenge to the constitutionality of a federal statute, intervened in the appeal in accordance with 28 U.S.C. § 2403(a), filing a brief and participating in the oral argument of the case.

II.

The statutory provision that Connecticut complains of, section 523(a)(5)(A) of the Act, states in relevant part:

> (a) A discharge under section 727, 1141, or 1328(b) of this title does not discharge an individual debtor from any debt —
>
> .....
>
> (5) to a spouse, former spouse or child of the debtor, for alimony to maintenance for, or support of such spouse or child, in connection with a separation

---

[3]Section 405(c)(1)(B), one of the Act's transitional provisions, states:

> (c)(1) During the transition period, an appeal from a judgment, order, or decree of a United States bankruptcy judge shall be —
>
> .....
>
> (B) if the parties to the appeal agree to a direct appeal to the court of appeals for [the] circuit [in which the bankruptcy judge sits], then to such court of appeals....

See generally In re Riddervold, No. 80-5062, slip op. 2675, 2677-78 (2d Cir. Apr. 27, 1981).

See generally In re Riddervold, No. 80-5062, slip op. 2675, 2677-78 (2d Cir. Apr. 27, 1981).

> agreement, divorce decree, or property settlement agreement, *but not to the extent that* —
>
> > (A) *such debt is assigned to another entity, voluntarily, by operation of law, or otherwise....*

(Emphasis added.) The term "entity" is elsewhere defined to include "governmental unit," see 11 U.S.C. § 101(14), which in turn encompasses "State," id. § 101(21).

Prior law had not permitted the discharge of debts arising out of a child support obligation assigned to a State. See 42 U.S.C. § 656(a) (1976), repealed by section 328 of Title III of the 1978 Reform Act, 92 Stat. 2679. The revised provision served to expand the scope of dischargeable debts, without any compromise of obligations directly serving their intended purpose of providing support to children or the former spouse. See Sen. Rep. No. 95-598, 95th Cong., 2d Sess. 79, reprinted in [1978] U. S. Code Cong. & Ad. News 5787, 5865.

Connecticut relies principally on the Supreme Court's decision in National League of Cities v. Usery, 426 U.S. 833 (1976), which held that the Tenth Amendment bars Congress from enacting legislation under the Commerce Clause, U.S. Const., art. 1, § 8, cl. 3, that "directly displace[s] the States' freedom to structure integral operations in areas of traditional governmental functions." Id. at 852. Reasoning that the same analysis should apply to congressional enactments under the bankruptcy power, U.S. Const., art. 1, § 8, cl. 4, the State claims that the discharge provision in question interferes with the State's "intimate involvement" with the enforcement of child support obligations, an involvement that it traces as far back as a colonial statute of 1699. Though conceding that the federal government has come to play a major role in this as in many other areas of public welfare, the State insists that the collection and enforcement of child support obligations nonetheless remains a matter of traditional state responsibility in Connecticut. It points out, in this connection, that "[o]rders of child support are established in state courts, using state statutory and case law.

Enforcement of those orders is left to state investigators, state family relations officers, state deputy sheriffs and state lawyers." (Footnote omitted.)

At a more concrete level, Connecticut argues that section 523(a)(5)(A), if allowed to stand, will impose a significant economic burden on the State. In the unlikely event that all child support debtors were to file petitions in bankruptcy, the State envisages a possible loss of as much as $1.25 million in annual payments to the State, as well as a loss of $47.1 million in accumulated past child support arrearages. Beyond these financial losses, the State speculates that the discharge provision, acting as "a green light" to parents to avoid their duty to support their children," will prejudice the State's efforts to enforce current obligations: "[w]hile no figures are presently available, logic dictates that knowledge by an absent parent that unpaid child support may later be discharged can only discourage, not encourage, continuing payment of those support payments."

We note at the outset that the reasoning of the *National League of Cities* decision, which dealt only with the Commerce Clause power, see 426 U.S. at 852 n.17, has not — so far, at least — been generalized to strike down federal statutes based upon other sources of congressional power. See, e.g., Massachusetts v. United States, 435 U.S. 444, 454-60 (1978) (taxing power); Fitzpatrick v. Bitzer, 427 U.S. 445, 455-56 (1976) (section 5 of the Fourteenth Amendment). We also note the uncertain status of the decision on which the State primarily relies in maintaining that the bankruptcy power is subject to Tenth Amendment limitations, Ashton v. Cameron County Water Improvement District, 298 U.S. 513, 530-32 (1936). We share the doubts so well expressed by Judge Krechevsky that *Ashton* remains a sound basis for a Tenth Amendment analysis of bankruptcy laws, in light of United States v. Bekins, 304 U.S. 27, 49-54 (1938), and Prudential Insurance Co. v. Benjamin, 328 U.S. 408, 433 n.4 (1945). See also 1 Collier on Bankruptcy ¶ 0.02, at 5-6 (14th ed. 1974).

In this case, however, we need not definitively resolve this problem. We are satisfied, with the bankruptcy judge, that even if *National League of Cities* does apply to Congress's power "[t]o establish...uniform Laws on the subject of Bankruptcies throughout the United States," under the circumstances presented in this case the challenged provision does not transgress the limits announced in that decision.

In the first place, we cannot accept Connecticut's contention that the discharge provision burdens a "traditional [state] governmental function," as the federal wage and hour laws at issue in *National League of Cities* were found to impinge on "the States' abilities to structure employer-employee relationships in such areas as fire prevention, police protection, sanitation, public health, and parks and recreation" — all "functions...which governments are created to provide, services...which the States have traditionally afforded their citizens." 426 U.S. at 851. Here, the federal act does not, as the State claims, affect its freedom to structure services for the promotion of the welfare of its children; rather, it affects the State's ability to recoup indirectly some of its costs in administering its public assistance program. This system of recoupment is itself, moreover, the product of federal mandate. As Judge Krechevsky observed, the statutory provision requiring the assignment of child support obligations to the State as a condition of eligibility for AFDC assistance, Conn. Gen. Stat. § 17-82b,[4] was enacted expressly to meet the condition imposed under Title IV-A of the Social Security Act, 42 U.S.C. § 602(a)(26)(A), making such

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[4]The Connecticut statute provides in relevant part that, by making an application for AFDC assistance,

> the supervising relative shall assign to the commissioner [of income maintenance] the right of support, present, past and future, due all persons seeking assistance and shall assist the commissioner in pursuing support obligations due from the absent parent. Notice of such assignment shall be conspicuously placed on said application and shall be explained to the supervising relative at the time of application.

assignments a precondition to receipt of federal funds for the State's AFDC program.[5] Payments made to the State under these assignments do not even go into Connecticut's AFDC budget: 35 percent of the total is credited to the United States as a reduction in federal contributions to the AFDC program, while the rest is allocated to the State's General Fund for unrestricted use.

It thus can hardly be said that the discharge provision compromises an otherwise unhindered freedom on Connecticut's part to structure a "traditional" or "integral" state governmental function. The State's latitude in designing and operating an AFDC program has been circumscribed from the outset by the restrictions set forth in Title IV-A, though it does retain wide discretion in such areas as the setting of benefit levels and eligibility standards within federal limits. See, e.g., Quern v. Mandley, 436 U.S. 725, 740 (1978). The AFDC system as a whole has long been recognized as being "based on a scheme of cooperative federalism," King v. Smith, 395 U.S. 309, 316 (1968) — a scheme that by its very nature anticipates a sharing of responsibility and authority between the cooperating governments.

Against this background, it simply makes no sense to assert that Congress exceeds its constitutional authority when, in an otherwise reasonable exercise of its bankruptcy power, it impairs the value of support obligations assigned to a State —

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[5]Section 602(a)(26)(A) provides:

> (a) A State plan for aid and services to needy families with children must...(26) provide that, as a condition of eligibility for aid, each applicant or recipient will be required —
>
> > (A) to assign the State any rights to support from any other person such applicant may have (i) in his own behalf or in behalf of any other family member for whom the applicant is applying for or receiving aid, and (ii) which have accrued at the time such assignment is executed....

assets that are themselves created at federal instance. In sharp contrast to the statute struck down in *National League of Cities*, the discharge provision at issue here is not an exercise of federal power addressed to "the States in their capacities as sovereign governments," 426 U.S. at 852, that threatens their '"ability to function effectively in a federal system,'" id., quoting Fry v. United States, 421 U.S. 542, 547 n.7 (1975). Its impact, moreover, is only indirect. Indeed, if the State considers the risk of losses through such discharges serious enough, it can act to strengthen its collection capability in order to minimize the amounts of arrearages that are allowed to accrue.[6]

In light of these conclusions, we do not think it necessary that the United States show any special justification for the provision, or any extraordinary federal interest behind it. It is enough that Congress has acted reasonably toward the proper end of its bankruptcy power — to "relieve the honest debtor from the weight of oppressive indebtedness and permit him to start afresh." Williams v. United States Fidelity & Guaranty Co., 236 U.S. 549, 554-55 (1915). The statute promotes this end more broadly than prior law, but still recognizes the genuine interests of the States by maintaining as non-dischargeable debts those obligations that flow directly to their intended beneficiaries. In short, giving proper weight to the federal interest in bankruptcy reform, we see no basis for concluding that the discharge provision is the type of intrusive exercise of congressional power held impermissible in *National League of*

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[6]It should be noted that the State's child support collection activities are themselves heavily shaped by federal mandate, notably the provisions of Title IV-D of the Social Security Act, 42 U.S.C. §§ 651-662. Section 654 of this Title, for example, imposes a wide variety of requirements on state child support plans, including an undertaking on the State's part to comply with federal standards determined "to be necessary to the establishment of an effective program for locating absent parents, establishing paternity, obtaining support orders, and collecting support payments...." Id. § 654(13). Thus, even in this area, "integral" state functions are subject to substantial federal influence.

Cities. We conclude therefore that the federalist concerns of the Tenth Amendment are not offended by section 523(a)(5)(A) of the Bankruptcy Act.

We turn finally to Connecticut's Eleventh Amendment argument. The State contends that "[a] proceeding in bankruptcy which requires the state to take affirmative action to protect its right as sovereign from being 'sued' by a citizen is constitutionally impermissible under the Eleventh Amendment. To permit otherwise would be to allow a citizen to do indirectly what he is prohibited from doing directly." We see no merit in this argument, and agree with Judge Krechevsky that our opinion in In re Crisp, 521 F.2d 172, 178 (2d Cir. 1978), fully answers the State's contention on this point. The State's insistence that this case is distinguishable because it did not waive its immunity here, as it did in *Crisp,* id. at 179, is simply incorrect. We left no room for doubt in *Crisp* that the State's waiver of immunity was an alternative, not a necessary, basis for our rejection of the State's argument.

The judgment of the bankruptcy court is affirmed.

Opposition

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No. 81-565

In the Supreme Court of the United States

OCTOBER TERM, 1981

STATE OF CONNECTICUT, PETITIONER

v.

GEORGE D. GLIDDEN AND UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the Tenth or Eleventh Amendment to the United States Constitution bars discharge in bankruptcy of a debt owed to a state as assignee of a child support obligation.

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In the Supreme Court of the United States

OCTOBER TERM, 1981

No. 81-565

STATE OF CONNECTICUT, PETITIONER

v.

GEORGE D. GLIDDEN AND UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 10a-19a) is reported at 653 F.2d 85. The opinion of the bankruptcy court (Pet. App. 1a-9a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on June 25, 1981. The petition for a writ of certiorari was filed on September 18, 1981. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. A provision of the Social Security Act, 42 U.S.C. 602(a)(26)(A), requires states that participate in the Aid to Families With Dependent Children (AFDC) program to require recipients of

AFDC benefits to assign to the state any rights they may have to receive alimony, maintenance or child support from another individual. In response, the State of Connecticut enacted Conn. Gen. Stat. Ann. § 17-82b (West Cum. Supp. 1981), providing that upon making application for AFDC benefits "the supervising relative shall assign * * * the right of support, present, past and future, due all persons seeking assistance * * *" to the State commissioner of income maintenance.

Prior to the enactment of the Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549, a child support obligation could not be discharged in bankruptcy even if it had been assigned to a state. See former 42 U.S.C. 656(b); see also *Williams* v. *Department of Social & Health Services*, 529 F.2d 1264 (9th Cir. 1976). Section 328 of the Bankruptcy Reform Act, 92 Stat. 2679, repealed 42 U.S.C. 656(b). This repeal, coupled with another provision of the Bankruptcy Reform Act, 11 U.S.C. (Supp. IV) 523(a)(5), leaves support obligations nondischargeable only if they have not been assigned and are "owed directly to a spouse or dependent." S. Rep. No. 95-989, 95th Cong., 2d Sess. 79 (1978); see also 3 *Collier on Bankruptcy* ¶ 523.15[4], at 523-111 (15th ed. 1981).

2. On October 26, 1979, respondent George Glidden filed a petition in bankruptcy. Several years earlier he had obtained a divorce. The divorce decree directed him to pay child support of $30.00 a week. At the time of the divorce, Glidden's wife and children were receiving AFDC assistance. In order to maintain eligibility for assistance, Glidden's wife assigned her support rights to the State of Connecticut. When Glidden filed his bankruptcy petition he was $2,890 in arrears on his child support payments. (Pet. App. 12a.)

Respondent Glidden sought to discharge his debt for child support in the bankruptcy proceeding (Pet. App. 2a). The State filed an adversary proceeding in the bankruptcy court seeking to have 11 U.S.C. (Supp. IV) 523(a)(5) declared unconstitutional insofar as it allows for the discharge of support debts that have been assigned pursuant to 42 U.S.C. 602(a)(26)(A) and Conn. Gen. Stat. Ann. § 17-82b (Pet. App. 1a-2a). The bankruptcy court rejected the State's challenge and ordered the debt discharged (Pet. App. 1a-9a). Pursuant to Section 405(c)(1)(B) of the Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2685, the State appealed directly to the court of appeals (Pet. App. 12a-13a). There, the United States intervened under 28 U.S.C. 2403(a) to defend the constitutionality of 11 U.S.C. (Supp. IV) 523(a)(5) (Pet. App. 13a).

The court of appeals affirmed (Pet. App. 10a-19a). It held that the Tenth Amendment is not violated by discharge of a support obligation that has been assigned to a state, reasoning that "the discharge provision at issue here is not an exercise of federal power addressed to 'the States in their capacities as sovereign governments' * * * that threatens their 'ability to function effectively in a federal system * * *'" (Pet. App. 18a, quoting *National League of Cities* v. *Usery*, 426 U.S. 833, 852 (1976)). Relying upon its decision in *In re Crisp*, 521 F.2d 172 (1975), the court of appeals further held that the Eleventh Amendment is not violated by such a discharge (Pet. App. 19a). In *Crisp*, the court of appeals concluded that the Eleventh Amendment has no application to the discharge in bankruptcy of a debt to a state, because the discharge does not entail an action against the state for recovery of money.

ARGUMENT

The decision of the court of appeals is correct, does not conflict with any decision of this Court or any other court, and does not warrant further review.

1. Relying primarily upon *National League of Cities* v. *Usery*, 426 U.S. 833 (1976), petitioner argues (Pet. 3-5) that the discharge in bankruptcy of child support debts assigned to the State as a condition of eligibility for AFDC assistance violates the Tenth Amendment. In support of that contention, petitioner asserts that enforcement of child support obligations is a traditional function of state government (*id.* at 9-10) and that discharge of such debts will have an adverse effect upon state revenues (*id.* at 5-7).

In *National League of Cities*, the Court concluded that Congress was barred from exercising its plenary power under the Commerce Clause so as to "directly displace the State's freedom to structure integral operations in areas of traditional governmental functions" (426 U.S. at 852) and to deprive the states of " 'functions essential to separate and independent existence' " (*id.* at 845, quoting *Coyle* v. *Oklahoma*, 221 U.S. 559, 580 (1911) and *Lane County* v. *Oregon*, 74 U.S. (7 Wall.) 71, 76 (1869)), thereby " 'impair[ing] the States' integrity or their ability to function effectively in a federal system' " (*National League of Cities* v. *Usery*, *supra*, 426 U.S. at 843, quoting *Fry* v. *United States*, 421 U.S. 542, 547 n.7 (1975)). See also *Hodel* v. *Virginia Surface Mining & Reclamation Association*, No. 79-1538 (June 15, 1981), slip op. 21. Petitioner has not demonstrated an interference with state sovereignty of the kind proscribed by *National League of Cities*.

a. At the outset we note that Congress' authority to enact the Bankruptcy Reform Act does not rest merely upon the Commerce Clause, but arises di-

rectly from the Bankruptcy Clause (Article I, Section 8, Clause 4), which confers upon Congress the unqualified power "[t]o establish * * * uniform Laws on the subject of Bankruptcies throughout the United States."[1] Congress accordingly possesses "supreme power in respect of bankruptcies." *New York* v. *Irving Trust Co.*, 288 U.S. 329, 333 (1933). This constitutional authority extends to the claims of states against a bankrupt's estate. *Ibid.*; see also *Van Huffel* v. *Harkelrode*, 284 U.S. 225, 228 (1931); *Gardner* v. *New Jersey*, 329 U.S. 565, 572-574 (1947). Although, as the court of appeals recognized (Pet. App. 15a-16a), there is no need, in this case, to decide precisely what limit, if any, the Tenth Amendment places upon Congress' power under the Bankruptcy Clause, it is instructive to note, as did the bankruptcy court (Pet. App. 5a), that:

> the commerce power is a general one which has been employed to serve the most far-reaching ends. By contrast, the bankruptcy power is a specific one, focused upon a restricted and identifiable area of societal concern.

The power to create uniform bankruptcy law necessarily implies the authority to establish terms upon which all debts may be discharged, irrespective of the identity of the creditor. Thus, petitioner's contention strikes at the heart of the bankruptcy power, see *Perez* v. *Campbell*, 402 U.S. 637 (1971); *New York* v. *Irving Trust Co.*, *supra*, 288 U.S. at 333, and

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[1] In *National League of Cities* v. *Usery*, *supra*, 426 U.S. at 852 n.17 & 855 n.18, the Court declined to consider whether the Tenth Amendment limitations on the permissible reach of legislation under the Commerce Clause are applicable to federal authority exercised under other constitutional provisions. Compare *Fitzpatrick* v. *Bitzer*, 427 U.S. 445, 456 (1976).

must be contrasted with the exercise of the commerce power deemed peripheral in *National League of Cities*. See 426 U.S. at 856 (Blackmun, J., concurring).[2]

b. In any event, the court of appeals correctly concluded (Pet. App. 16a) that the bankruptcy discharge does not impermissibly burden a traditional state government function.[3] Unlike the wage and hour legislation covering state employers struck down in *National League of Cities*, the discharge provisions of the Bankruptcy Reform Act affect state creditors only incidentally. Their direct effect is upon the debtor and his obligations. Any indirect effect upon a state resulting therefrom is insufficient to establish a violation of the Tenth Amendment. See *Hodel* v. *Virginia Surface Mining & Reclamation Association, supra*, slip op. 21, 26 n.33; *Oklahoma* v. *Atkinson*, 313 U.S. 508, 534-535 (1941).

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[2] Petitioner's reliance (Pet. 3) on *Ashton* v. *Cameron County Water Improvement District No. One*, 298 U.S. 513 (1936), is misplaced. Whatever vitality that decision, which limits discharge of municipal debtors, may retain after *United States* v. *Bekins*, 304 U.S. 27 (1938), (see *Prudential Insurance Co.* v. *Benjamin*, 328 U.S. 408, 433 n.42 (1946)), it does not suggest any limitation on the discharge of debts owed to a state creditor. In any event, while the court of appeals harbored doubt on this score, it assumed that *Ashton* remained good law and that *National League of Cities* applies to exercises of the bankruptcy power (Pet. App. 16a). Accordingly, contrary to petitioner's suggestions (Pet. 3 n.1, 7-8) there is no occasion for further review to examine those questions.

[3] Contrary to petitioner's contention (Pet. 9), the court of appeals' decision does not rest upon the conclusion that collection of child support is not a traditional government function. Rather, the decision rests upon the conclusion that the State's own essential policy choices respecting this function had not been disturbed (see Pet. App. 16a-18a).

As the court of appeals observed (Pet. App. 16a), the availability of a bankruptcy discharge "does not, as the State claims, affect its freedom to structure services for the promotion of the welfare of its children; rather, it affects the State's ability to recoup indirectly some of its costs in administering its public assistance program." Accordingly, the bankruptcy discharge authorized by 11 U.S.C. (Supp. IV) 523(a)(5) in no respect impairs petitioner's "ability 'to structure integral operations in areas of traditional governmental functions.'" *Hodel* v. *Virginia Surface Mining & Reclamation Association*, *supra*, slip op. 21, quoting *National League of Cities* v. *Usery*, *supra*, 426 U.S. at 852. Nor does the State's ability to recoup its (federally subsidized) outlays by insisting upon payment of obligations by an insolvent individual involve "matters that are indisputably 'attributes of state sovereignty.'" *Hodel* v. *Virginia Surface Mining & Reclamation Association*, *supra*, slip op. 21, quoting *National League of Cities* v. *Usery*, *supra*, 426 U.S. at 845. First, the assignment upon which petitioner seeks to recover was compelled by a state statute enacted to meet a condition of participation in the federally subsidized AFDC program. Second, a substantial share of any sum that could be recovered must be paid back to the United States (see Pet. App. 17a).[4] The AFDC program itself "is based on a scheme of cooperative federalism * * * financed largely by the Federal

[4] As the court of appeals recognized (Pet. App. 18a), petitioner is not precluded by the Bankruptcy Reform Act from recovering upon assignments; it is only when arrearages are allowed to accrue that the State risks discharge of debts owed to it. Accordingly, petitioner's policy of recouping part of its share of AFDC payments from available child support payments is impaired only to the extent petitioner places itself at risk by lax enforcement of that policy.

Government * * * and * * * administered by the States" under plans which conform with federal regulations. *King* v. *Smith*, 392 U.S. 309, 316 (1968); see also *Shea* v. *Vialpando*, 416 U.S. 251, 253 (1974).[5] Accordingly, no attribute of state sovereignty is impaired by the repeal of provisions of the former statutory regime that had exempted child support debts assigned to a state pursuant to the mandate of the Social Security Act from discharge in bankruptcy.

2. Contrary to petitioner's contention (Pet. 8), discharge of a bankrupt's debt to a state does not implicate petitioner's sovereign immunity established by the Eleventh Amendment. See *Gardner* v. *New Jersey*, *supra*, 329 U.S. at 573-574; *New York* v. *Irving Trust Co.*, *supra*, 288 U.S. at 333; cf. *Van Huffel* v. *Harkelrode*, *supra*, 284 U.S. at 228.[6] Peti-

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[5] While petitioner asserts (Pet. 9) that it has long legislated upon the subject of child support, it is undisputed that the assignment of payments upon which petitioner seeks to recover was compelled by a statute enacted to meet the requirements for participation in the AFDC program. Petitioner would have no complaint if waiver of any right to take an assignment of child support payments were a condition of participation in the program. *Oklahoma* v. *Civil Service Commission*, 330 U.S. 127, 143 (1947); *Steward Machine Co.* v. *Davis*, 301 U.S. 548, 585-598 (1937). The effect of the bankruptcy discharge in issue is not substantially different. No question is presented here as to the constitutionality of discharge of a debt owed to a state in circumstances where the state's right arose independently of an incentive provided by federal law.

[6] The Bankruptcy Reform Act makes certain classes of debts owed to a state or other governmental unit nondischargeable. See 11 U.S.C. (Supp. IV) 523(a)(1), (7) and (8). In other respects, however, provisions respecting creditors generally are applicable to state creditors, "notwithstanding any assertion of sovereign immunity." 11 U.S.C. (Supp. IV) 106(c). The sovereign immunity of states against claims by the bank-

tioner's reliance upon *Edelman* v. *Jordan*, 415 U.S. 651 (1974), is misplaced. There the Eleventh Amendment was held to bar "a suit by private parties seeking to impose a liability which must be paid from public funds in the state treasury * * *." *Id.* at 663. Here, there is neither a suit against the state nor an attempt to obtain money from the state treasury. Accordingly, no infringement of petitioner's Eleventh Amendment immunity from suit is implicated. See *United States* v. *Bank of New York Co.*, 296 U.S. 463, 480-481 (1936). The Court recognized in *Gardner* v. *New Jersey*, *supra*, 329 U.S. at 573-574, that in a bankruptcy proceeding, even "[i]f the claimant is a State, the procedure of proof and allowance is not transmuted into a suit against the State because the court entertains objections to the claim." In this case, as in *Gardner*, "[t]he State is seeking something from the debtor," and "[n]o judgment is sought against the State." *Id.* at 574.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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ruptcy estate is recognized by the Act. See 11 U.S.C. (Supp. IV) 106(a) and (b); S. Rep. No. 95-989, *supra*, at 29-30.

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